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HAHN LOESER & PARKS, LLP			WEEKS, GLORIA R	
One GOJO Plaza			ART UNIT	
Suite 300			PAPER NUMBER	
AKRON, OH 44311-1076			3721	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,362

Applicant(s)

JACOBSEN ET AL.

Examiner

Gloria R. Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/16/05</u> | 6) <input type="checkbox"/> Other: _____ |

Response to Amendments

1. Claims 1, 20, 23, 26, 29, 32 and 33 have currently been amended. Claims 34-36 have added.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 17, 32 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "the access position" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: how the plurality of batch containers "including a batch of product there" structurally defines the batch containers of the handling system. It seems as though the fact that the handling system includes a plurality of "containers" inherently implies that the structure is inherently capable of containing or supporting item(s).

Claim 34 is drawn to the product handled by the system, and fails to further limit the structural limitation of the handling system.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-33 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Ventura et al. (USPN 5,121,589).

Regarding claims 1-10, 16-22, 32 and 35, Ventura discloses a material handling system including: a plurality of human operator (W1) work-stations (S1-S5, E, B); batch delivery means including a shuttle device (C_L, 40) for delivering batches of product (T_L) on an “on demand” basis from a product supply station (S1; figure 1A) via sensing means (column 11, lines 10-16), the batch delivery means further including a transferring mechanism (B) and a batch container buffer (D); packaging container delivery means (100) including a chute guide means (inclined ramp; figure 4A) and a packing container buffer (102) for automatically delivering individual packing containers (70, 72, 74, 76) to the work-station on “on demand basis” via sensing means (B2; figure 5b); and a batch container dispatch means including a mechanism (C_E) to remove the batch container (T_E) from an access position of the workstation and an actuator device (E_E) to actuate the mechanism (C_E) via controller (column 13 lines 16-20; figure 6A).

With respect to claims 1, 11 and 12, Ventura discloses a material handling system including: at least one operator (W1) work-station (S1-S5, E, B); batch delivery means including

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a shuttle device (C_L , 40) for delivering batches of product (T_L) on an “on demand” basis (column 11, lines 10-16); packaging container delivery means (100) for automatically delivering individual packing containers (70, 72, 74, 76) to the work-station on “on demand basis” (B2; figure 5b); and a work space bench (D).

In reference to claims 1 and 13-15, Ventura discloses a material handling system including: at least one operator ($W1$) work-station ($S1$ - $S5$, E, B); batch delivery means including a shuttle device (C_L , 40) for delivering batches of product (T_L) on an “on demand” basis from a product supply station ($S1$; figure 1A) via sensing means (column 11, lines 10-16), the batch delivery means further including a transferring mechanism (B) and a bath container buffer (D); packaging container delivery means (100; worker; figure 6A) for automatically delivering individual packing containers (70, 72, 74, 76) to the work-station on “on demand basis” (B2; figure 5b); and container dispatch means (102, inclined ramp; figure 4A) for automatically dispatching product filled packing containers from the work-station on a “on demand” basis.

Regarding claim 23-25, Ventura discloses a material handling method including the steps of: providing at least one operator work-station ($S1$ - $S5$, E, B) at which an operator ($W1$) both processes and packages a product; providing a plurality of batch containers (T_L), each of which includes a batch of product (crop) therein; automatically delivering (C) discrete batch containers (T_L) of the product to the operator work-station for processing by a worker ($W1$; column 11, lines 25-28); automatically dispatching the batch containers (T_E) from the operator work-station on a “on demand” basis.

With respect to claims 26-28, Ventura discloses a material handling system including: at least one operator ($W1$) work-station ($S1$ - $S5$, E, B); batch delivery means (C_L , 40) for delivering batches of product (T_L) on an “on demand” basis ($S1$; figure 1A; column 11, lines 10-16);

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packaging container delivery means (100; worker; figure 6A) for automatically delivering individual packing containers (70, 72, 74, 76) to the work-station on “on demand basis” (B2; figure 5b); batch container dispatch means (C_E, E_E) for automatically dispatching the batch containers (T_E) from the work station; and packing container dispatch means (102, inclined ramp; figure 4A) for automatically dispatching product filled packing containers from the work-station on a “on demand” basis.

In reference to claims 29-31, Ventura discloses a material handling method including the steps of: providing at least one operator work-station (S1-S5, E, B) at which an operator (W1) both processes and packages a product; automatically delivering (C) individual batch containers (T_L) of the product to the operator work-station for processing by a worker (W1; column 11, lines 25-28); automatically dispatching the batch containers (T_E) from the operator work-station after the batch containers have been emptied; and automatically delivering discrete batch containers (T_L).

In reference to claim 33, Ventura discloses a material handling method including the steps of: providing at least one operator work-station (S1-S5, E, B) at which an operator (W1) both processes and packages a product; providing a plurality of batch containers (T_L), each of which includes a batch of product (crop) therein; automatically delivering (C) discrete batch containers (T_L) of the product to the operator work-station for processing by a worker (W1; column 11, lines 25-28); automatically dispatching the batch containers (T_E) from the operator work-station after the batch containers have been emptied.

Regarding claims 1 and 34, Ventura et al. discloses a material handling system including: a plurality of human operator (W1) work-stations (S1-S5, E, B); batch delivery means including a transport mechanism (C_L, 40) for delivering batches of product (T_L) on an “on demand” basis

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(column 11, lines 10-16; and a packaging container delivery means including a transport mechanism (100) for automatically delivering individual packing containers (70, 72, 74, 76) to the work-station on "on demand basis" (B2; figure 5b).

Regarding claim 36, although Ventura et al. discloses a food handling system, classification of the product being handled does not further limit the structural limitation of the handling system itself.

6. Claims 1-7 and 11-31 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Huang et al. (USPN 6,438,928).

In reference to claims 1-7, 11-22, 26-28 and 33, Huang et al. discloses a material handling system having operator workstations (42, 48) disposed along a processing line (94), including: at least one operator work-station (50); automatic batch delivery means (48) which deliver batches of a product containers (10A, 10B, 10C) to a work-station (94) on an "as required" or "on demand" basis, wherein the batch delivery means includes means for sensing (112) or identifying when a batch of product is required at the work-station (94) and a buffer (96); packing container delivery means (42) which deliver individual packing containers (44A, 44B, 44C) to the work-station (94) on an "as required" or "on demand", wherein the packing container delivery means includes means for sensing (column 4 lines 25-31) or identifying when a packing container is required at the work station and a guide means (46); the batch delivery means (48) includes a shuttle device (90) and a transferring mechanism (column 3 lines 60-column 4 lines 2) which transfers the batch of a product (10A, 10B, 10C) from the shuttle device (90) to an access position; dispatch means (106) having an actuated removal mechanism (98); and a controller (50) designed to ergonomically accommodate a human operator at a filling workstation of the handling system. The system of Huang et al. is capable of accommodating an

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operator at additional workstation of the system. Thus, Applicant's recitation of the intended use of the claimed invention by an operator must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

In reference to claims 23-25, 29-31 and 33, Huang et al. discloses a material handling method, including the steps of: automatically delivering (48) batches of product (10A, 10B, 10C) to a work-station (94) on an "as required" or "on demand" basis, automatically delivering (42) individual packing containers (44A, 44B, 44C) to the work-station (94) on an "as required" or "on demand"; automatically dispatching (106) product-filled packing containers (10D, 10E, 10F) from the workstation (94). Although the system of Huang et al. is designed to ergonomically accommodate a human operator at a filling workstation (50) of the handling system, Huang et al. only discloses having an operator for loading the batched of product (10A, 10B, 10C) to be automatically fed to the filling workstation. Applicant's recitation of the intended use of the claimed invention by an operator must result in a manipulative difference as compared to the prior art.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abatti et al. (USPN 4,590,739) in view of Johnson (USPN 3,641,738).

In reference to claims 1, 2 and 11-13, Abatti et al. discloses a material handling system including” at least one human operator work-station (32) at which an operator both processes and packages a product (column 4 lines 22-26) at a bench (38); batch delivery means (20) for automatically delivering batches of the product to the operator work station (20); and a packing container delivery means (28) for automatically delivering individual packing containers to the operator work-station (20); packing container dispatch means (40); and a removal mechanism (42). Abatti et al. does not disclose means for sensing when a batch of product is “required” or “on demand” at the work-station. Johnson teaches a material handling system including a sensing means (176) for sensing when a batch of product is required at a workstation (column 8 lines 27-32). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the material handling system of Abatti et al. to include the sensing means of Johnson et al., since column 8 lines 14-21 states that monitoring the flow of product to a workstation aids in the prevention of overflow and damaging of the product.

9. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abatti et al. (USPN 4,590,739) in view of Johnson (USPN 3,641,738) as applied to claim 2 above, and further in view of Wagner et al. (USPN

Regarding claim 3-5, Abatti et al. discloses a batch delivery means (20) that does not include a shuttle device. Wagner et al. teaches a material handling system having a batch delivery means including a shuttle device (50) that transports a batch container (S) to a transferring mechanism (Y; column 6 lines 2-44) and a batch container buffer (150). It would have been obvious to one have ordinary skill in the art at the time of the invention to modify the batch delivery means of Abatti et al. to include the shuttle device and batch container of Wagner

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et al., since column 6 lines 44-48 states that such a modification allows for packaging of a predetermined group of product.

10. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (USPN 6,438,928) in view of Prakken (USPN 4,398,383).

Regarding claims 8-10, Huang et al. discloses a material handling system, having a packing container delivery means (42) including guide means (58, 56) for automatically delivering individual packing containers (44A, 44B, 44C) to the work-station (94) on an "as required" or "on demand", but does not disclose the guide means being in the form of a chute. Prakken teaches a material handling system having a packing container delivery means (1) including a chute (2, 4) that extends from the packing container delivery means (1) to a filling position, wherein the chute is provided with a packing buffer (5). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system of Huang et al. to include the chute and buffer of Prakken for the purpose of guiding accumulated packing containers into a filling workstation.

Response to Arguments

11. Applicant's arguments filed November 16, 2005 have been fully considered but they are not persuasive.

Applicant's first argument is that the handling system of the prior art disclosed are designed to remove the need for manual operations, whereas Applicant's invention requires an operator to manually process product on an "as required" or "on demand" basis". As the prior art adequately discloses the structure and steps of automatically conveying product A on a first conveyor and product B on a second conveyor, wherein both product A and product B are

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conveyed to a common area at which product A and product B are combined via mechanical structure and discharged as a group on a third conveyor, Examiner has found that it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the automatic activity of packaging product A with product B with manual activity which accomplishes the same result. Additionally, column 1 lines 40-46 of Huang et al. states that it is well known to process the packaging by hand, although this option is found to be labor intensive and increases manufacturing costs.

The fact that the conveying systems of Huang are sensor driven, the products are found to be driven “on demand” of the sensors, which are controlled by a human operator at control panel (50).

Applicant had stated concern regarding Examiners interpretation of elements (10A-10C) of Huang as “a batch of product”, as Applicant has found said elements to define neither a product nor a batch. Examiner has found the cartons or boxes (10A-10C) of Huang to meet Applicant’s limitations of “a batch of product” as the cartons or boxes (10A-10C) are processed (i.e. conveyed, filled, sealed, etc.) as a group. The term product is defined as something produced by human or mechanical effort or by a natural process. As cartons and/or boxes are items produced by humans, Examiner has found the elements (10A-10C) to meet the limitations of Applicant’s invention as claimed.

Examiner has interpreted elements (44A-44C) as individual packing containers since Huang has disclosed said elements as plastic bags (column 11 lines 14-17) which are deemed to be packing containers.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks
Examiner
Art Unit 3721



grw
January 18, 2006



SCOTT A. SMITH
PRIMARY EXAMINER